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Counsel for State Defendants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

RUSSELL G. GREER,

Plaintiff,

v.

GARY R. HERBERT, in his official
capacity as Governor of the State of Utah;
SEAN D. REYES, in his official capacity as
Attorney General of the State of Utah;
SIM S. GILL, in his official capacity as
District Attorney of the City and County of
Salt Lake; JACKIE BISKUPSKI, in her
official capacity as Mayor of the City of Salt
Lake; BEN McADAMS, in his official
capacity as Mayor of the County of Salt Lake;
KATHY BERG, in her official capacity as
Director of the Division of Commerce;
JAMES ALLRED, in his official capacity as
Business Licensing Manager for the City of
Salt Lake; ROLEN YOSHINAGA, in his
official capacity as Director of Planning and
Development for the County of Salt Lake,

Defendants.

**STATE DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS
SUPPLEMENTAL COMPLAINT**

Case No. 2:16-cv-01067-DBP

Magistrate Judge Dustin B. Pead

Plaintiff's constitutional challenge to Utah laws that prohibit brothels and prostitution within brothels fails as a matter of law because commercial sex is not a fundamental right, and the challenged laws are supported by rational basis. Laws subject to rational basis review are "accorded a strong presumption of validity," *Teigen v. Renfrow*, 511 F.3d 1072 (10th Cir. 2007) (granting motion to dismiss), and it is the plaintiff's burden to overcome the presumption and show that the statute or law in question is not rationally related to a legitimate state interest. *Heller v. Doe*, 509 U.S. 312, 319 (1993). The Tenth Circuit presumes the statute's validity and requires the plaintiff to "overcome the presumption of rationality." *Teigen*, 511 F.3d at 1086; *see also Heller*, 509 U.S. at 320–21 (1993) (holding plaintiffs have the burden to establish that the policy is unconstitutional and "to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record"). "[A] classification 'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.' " *Heller*, 509 U.S. at 320 (quoting *Federal Communications Comm'n v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993)).

Plaintiff's Supplemental Complaint fails to overcome the challenged laws' presumption of rationality, and the State Defendants have shown multiple reasons that the challenged laws are rationally related to legitimate government interests. State Defs.' Mot. Dismiss Supp. Compl. at 13–16 doc. 57. The State Defendants' government interests, referenced in the State's Motion to Dismiss, are rationally related to its interest of prohibiting brothels and commercial sex in brothels. The State Defendants agree and understand that Plaintiff's challenge relates only to brothels, not prostitution as a whole.

Plaintiff's policy arguments that the challenged laws need to be updated, or that Nevada's system of regulating brothels works better than prohibition, are not proper before this Court. A court does not act as a "super-legislature to weigh the wisdom of legislation" and "strike down laws or regulations simply because the Court may believe that they are unwise or improvident." *Bensing v. United States*, 551 F.2d 262, 265 (10th Cir. 1977) (reviewing statute denying credit for act of commissioned military service performed prior to one's becoming 21). Here, the Court should apply rational basis review, as explained by the Tenth Circuit and Supreme Court, and determine that laws prohibiting brothels and prostitution within brothels, are rationally related to legitimate government interests. The State Defendants respectfully request that the Court dismiss Plaintiff's Supplemental Complaint with prejudice.

DATED: November 7, 2017.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Greg Soderberg
DAVID N. WOLF
GREG SODERBERG
Assistant Utah Attorneys General
Counsel for State Defendants

CERTIFICATE OF SERVICE

I certify that on November 7, 2017, a true and correct copy of the foregoing **State Defendants' Motion to Dismiss Supplemental Complaint** was mailed via First Class Mail and by email to the following:

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Pro Se Litigant

/s/ Mohamed I. Abdullahi